

**BEFORE THE
MISSOURI REAL ESTATE COMMISSION
STATE OF MISSOURI**

Missouri Real Estate Commission,)	
)	
Petitioner,)	
)	
vs.)	Case No. 6-11-108
)	
Michael L. Britt Sr.,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

Pursuant to notice and §§ 621.110, 339.100.3 and 324.042, RSMo,¹ the Missouri Real Estate Commission (“MREC”) held a hearing on June 13, 2012, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondent had violated the probationary terms of a prior Findings of Fact, Conclusions of Law and Disciplinary Order, issued February 22, 2010 (“2010 Disciplinary Order”), by the MREC and if so, whether additional discipline of Respondent’s license was warranted. All of the members of the MREC were present throughout the meeting. The MREC was represented by Assistant Attorney General Megan Kade Fewell. Respondent was properly and timely notified of the hearing. Respondent was present, but was not represented by legal counsel. After being present and considering all of the evidence presented during the hearing, the MREC issues these Findings of Facts, Conclusions of Law and Disciplinary Order.

Based on the foregoing, the MREC states:

¹ All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise indicated.

I.
FINDINGS OF FACT

1. The Missouri Real Estate Commission ("MREC") is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. The Respondent, Michael L. Britt Sr., is licensed by the MREC as a real estate broker, license number 1999008929, and said license was current and active at all times relevant to this proceeding.

3. On February 22, 2010, the MREC issued its Finding of Fact, Conclusions of Law, and Disciplinary Order with an effective date of March 4, 2010.

4. Pursuant to the 2010 Disciplinary Order, Britt's license was placed on probation for three years.

5. The terms of Britt's probationary period are stated as follows in the Disciplinary Order, Paragraph 2(D), on Page 4, in pertinent part:

(D) Respondent shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the Missouri Real Estate Commission.

6. By letters dated December 6, 2010 and January 5, 2011, sent to Britt's address at 3958 Delor, St. Louis, Missouri 63116, MREC notified Britt that he had been selected for a random audit and requested that Britt respond to schedule a mutually agreeable time to conduct the audit.

7. As of December 6, 2010 and January 5, 2011 Britt's address registered with the MREC was 3958 Delor, St. Louis, Missouri 63116.

8. Britt failed to respond to the December 6, 2010 and January 5, 2011 letters within thirty days.

9. By certified letter dated February 7, 2011, sent to Britt's address at 3958 Delor, St. Louis, Missouri 63116, MREC notified Britt that his audit was scheduled to begin at his place of business on March 21, 2011 at 10 a.m.

10. As of February 7, 2011 Britt's address registered with the MREC was 3958 Delor, St. Louis, Missouri 63116.

11. On March 21, 2011 at 10 a.m., a representative of MREC arrived at Britt's place of business. The door was locked and nobody responded to MREC's knocks at the door.

12. Since March 21, 2011, Britt has not made records available for inspection.

13. Britt first testified that he received the letters from the MREC but later testified that he did not recall the letter setting the audit date and time. Britt testified that he responded to the letters by calling the MREC. Britt did not respond to the letters in writing. Britt confirmed that he was not at the audit appointment. Britt testified that he had no records to show the auditor since he has not done real estate work since the 1990s. Britt testified that he had moved his office, but that this did not occur until March or April of 2012, well after the letters from the MREC and the audit appointment.

14. The MREC has jurisdiction over this matter pursuant to page 4, paragraph 4 of the 2010 Disciplinary Order, which provides, in pertinent part:

Upon the expiration and successful completion of the disciplinary period, Respondent's license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Commission determines that Respondent has violated any term or condition of this Order, the Commission may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and my [sic] suspend, revoke, or otherwise lawfully discipline Respondent's broker license.

15. As a result of the foregoing, on or about January 23, 2012, a Probation Violation Complaint was filed with the MREC alleging that grounds existed for additional disciplinary action against Respondent's Missouri real estate license, pursuant to § 324.042, RSMo.

16. The MREC set this matter for hearing and served notice of this disciplinary hearing upon Respondent in a proper and timely fashion.

17. Respondent was properly and timely notified of the MREC's June 13, 2012 hearing. Respondent was present, but was not represented by legal counsel.

II.

CONCLUSIONS OF LAW

18. Section 324.042, RSMo, provides:

Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

19. Pursuant to Section 324.042, RSMo, and page 4, paragraph 4 of the 2010 Disciplinary Order, the MREC has jurisdiction to hold additional hearings and impose further discipline if it finds that a licensee has violated any disciplinary terms previously imposed by the MREC, following notice, a hearing and a determination of a violation of the Order. .

20. Chapter 339.105.3, RSMO, states:

In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

21. The Missouri Code of State Regulations 20 CSR 2250-8.160(1) states:

Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's

regular place of business. No broker shall charge a separate fee relating to retention of records.

22. The Missouri Code of State Regulations 20 CSR 2250-8.170 states, in pertinent part:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

23. Britt's failure to adhere to the terms of his probation, by failing to respond in writing to the MREC's written requests and failing to make records available to the MREC for inspection or to allow the MREC to confirm the lack of such records, is a violation of the terms of the Disciplinary Order which provide cause to further discipline Britt's license under § 324.042, RSMo.

24. The MREC finds Respondent has violated the terms and conditions of the 2010 Disciplinary Order as a result of the conduct identified in the Findings of Fact herein.

25. Section 339.100.3, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license or by imposing a civil penalty not to exceed \$2,500 for each offense.

26. Section 339.205, RSMo, provides the MREC may discipline a real estate license after an initial disciplinary hearing through an order imposing a civil penalty not to exceed \$2,500 for each offense.

27. The MREC has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Therefore, having fully considered all the evidence before the MREC, it is the ORDER of the MREC that:

28. The real estate license of Respondent, Michael L. Britt Sr., license number 1999008929, is hereby placed on SUSPENSION until proof of completion of an accredited 48-hour broker course is provided and an audit has been conducted by the Missouri Real Estate Commission. Such suspension shall not exceed three (3) years. Proof of completion of the 48-hour course is to be mailed to Janet Carder, Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, Missouri 65102-1339. Upon receipt of proof of completion of the broker course and completion of a Commission audit, or at the end of the three year suspension period, the Respondent, Michael L. Britt Sr., will be placed on PROBATION for three (3) years. The period of suspension and probation shall constitute the "disciplinary period."

29. The additional terms and conditions of the disciplinary period are as follows:

- A. Respondent shall keep the MREC apprised at all times, in writing, of his current address and telephone number at each place of residence and business. Respondent shall notify the Commission within ten (10) days of any change in this information.
- B. Respondent shall timely renew his license and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain his license in a current and active state.
- C. Respondent shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the MREC.
- D. Respondent shall appear in person for interviews with the MREC or its designee upon request.

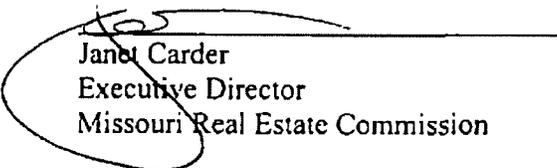
30. Upon the expiration and successful completion of the disciplinary terms, Respondent's license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Respondent's real estate broker license.

31. The MREC retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the MREC. No order shall be entered by the MREC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREC as provided by chapter 536, RSMo.

32. Any failure of Respondent to comply with any condition of discipline set forth herein constitutes a violation of this Order.

33. The MREC will maintain this Order as an open record of the MREC as provided in Chapters 339, 610, and 324, RSMo.

So Ordered this 22nd day of June, 2012.


Janet Carder
Executive Director
Missouri Real Estate Commission

held a hearing on February 10, 2010 at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. Respondent was present but was not represented by counsel. Petitioner was represented by Craig Jacobs, Assistant Attorney General.

5) The Commission served notice of the February 10, 2010 disciplinary hearing upon Respondent in a proper and timely fashion.

6) All the members of this Commission, with the exception of Jan Hunt, were present throughout the disciplinary hearing. Twila Hillme, Charles Davis, Charles Misko participated through conference call. Further, each member of this Commission that was present for the hearing has read the Administrative Hearing Commission's Decision.

7) The Respondent, Michael L. Britt, is licensed by this Commission as a real estate broker, license number 1999008929, which was current at all times relevant to this proceeding.

8) The Decision by the Administrative Hearing Commission in Case No. 07-1377RE is incorporated herein by reference as if fully set forth in this document.

II.

CONCLUSION OF LAW

1) This Commission has jurisdiction to take disciplinary action against Respondent's license pursuant to the provisions of Chapters 339 and 621, RSMo.

2) Respondent's license is subject to revocation, suspension or probation by this Commission pursuant to Section 339 100 3, RSMo

3) Cause exists to discipline Respondent's license pursuant to 339.100.2 (16) and (18), RSMo.

III

ORDER

1) Therefore, having fully considered all the evidence before this Commission, and giving full weight to the Decision, it is the ORDER of this Commission that the real estate license of Respondent, Michael L Britt, license number 1999008929, is hereby placed on PROBATION for three years. During Respondent's probation, he shall be entitled to practice as a real estate broker provided that he adheres to all of the terms stated herein.

2) The terms and conditions of the disciplinary period are as follows

A Respondent shall keep the Commission apprised at all times, in writing, of his current address and telephone number at each place of residence and business. Respondent shall notify the Commission within ten (10) days of any change in this information.

B. Respondent shall timely renew his license and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain his license in a current and active state.

C. If, at any time within the disciplinary period,

Respondent changes residence from the State of Missouri, ceases to be currently licensed under the provisions of Chapter 339, or fails to keep the Real Estate Commission advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the disciplinary period.

D Respondent shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the Missouri Real Estate Commission.

3) The Real Estate Commission will maintain this Order as an open record of the Real Estate Commission as provided in Chapters 339, 610 and 324, RSMo.

4) Upon the expiration and successful completion of the disciplinary period, Respondent's license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Commission determines that Respondent has violated any term or condition of this Order, the Commission may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and my suspend, revoke, or otherwise lawfully discipline Respondent's broker license.

So Ordered this 22nd day of February, 2010 This Order is to become effective March 4, 2010



Janet Carder
Executive Director
Missouri Real Estate Commission

Before the
Administrative Hearing Commission
State of Missouri



RECEIVED

APR 23 2008

MISSOURI
ATTORNEY GENERAL

MISSOURI REAL ESTATE
COMMISSION,

Petitioner,

vs

MICHAEL L. BRITT,

Respondent

No 07-1377 RE

RECEIVED

APR 25 2008

MREC

DECISION

There is cause to discipline Michael L. Britt because he committed and pled guilty five times to the crime of driving while intoxicated and three times to the crime of driving while his operator's license was revoked

Procedure

On August 10, 2007, the Missouri Real Estate Commission ("the MREC") filed a complaint seeking to discipline Britt. On October 23, 2007, we served Britt with our notice of complaint/notice of hearing and a copy of the complaint by certified mail. Britt answered the complaint. We held our hearing on January 14, 2008. Assistant Attorney General Neel Mookerjee represented the MREC. Neither Britt nor anyone representing him appeared. The case became ready for our decision on March 20, 2008.

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Findings of Fact

1 The MREC licensed Britt as a real estate broker on May 7, 1979 His license expires June 30, 2008

2 On June 8, 1995, Britt was convicted of driving while intoxicated in violation of § 577 010¹ in the Circuit Court of St Louis County

3 In the Circuit Court of the City of St Louis

a On January 10, 1999, the Circuit Attorney filed an information charging Britt in

i Count I with violating § 577 010, a Class B misdemeanor, “in that on the 10th day of January, 1999, in the 5000 block of Fendler in the City of St Louis, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol” and

ii Count II with violating § 302 321,² a Class A misdemeanor, “in that on the 10th day of January, 1999, in the City of St Louis, State of Missouri, the defendant operated a motor vehicle on a highway in the 5000 block of Fendler, during a time when his operator’s license was revoked under the laws of this state, and knew that his operator’s license was revoked ”³

b On August 18, 1999, the Circuit Court of the City of St Louis found Britt guilty, upon his plea of guilty, of

¹RSMo 1994 Statutory references are to RSMo Supp 2007, unless otherwise noted

²RSMo Supp 1995

³Ex C

- i driving while intoxicated, as charged in Count I, and sentenced Britt to 6 months of incarceration but suspended execution of the sentence and placed Britt on probation for two years, and
- ii driving while revoked, as charged in Count II, and sentenced Britt to 6 months of incarceration but suspended execution of the sentence and placed Britt on probation for one year to run concurrently with the probation on Count I

4 In the Circuit Court of the City of St Louis

a On March 27, 2001, the Grand Jury indicted Britt, charging him in

i Count I with violating § 577.010,⁴ Class D felony, “in that on February 7, 2001, in the 4800 block of Miami, in the City of State [sic] Louis, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol, and on August 18, 1999, the defendant was convicted of Driving While Intoxicated, for events occurring on January 10, 1999, in the City of St. Louis, State of Missouri, and on June 8, 1995, the defendant was convicted of Driving While Intoxicated for events occurring on March 4, 1995, in St Louis County, State of Missouri” and

ii. Count II with violating § 302.321,⁵ a Class A misdemeanor, “in that on February 7, 2001, in the City of St Louis, State of Missouri, the defendant operated a motor vehicle on a highway, in the 4800 block of Miami, during a time when his operators [sic] license was revoked

⁴RSMo 2000

⁵RSMo 2000

under the laws of this state, and that defendant knew that his operator's license was revoked ”⁶

- b On February 15, 2002, the Circuit Court of the City of St. Louis found Britt guilty, upon his plea of guilty, of
- i driving while intoxicated, as charged in Count I, and sentenced Britt to five years of incarceration but suspended execution of the sentence and placed Britt on probation for two years, and
- ii driving while revoked, as charged in Count II, and sentenced Britt to six months of incarceration, to run concurrent with the sentence for Count I, but suspended execution of the sentence and placed Britt on probation for one year

5 In the Circuit Court of St. Louis County.

- a On July 5, 2001, the Prosecuting Attorney filed an information charging Britt in Count I with violating § 577.010,⁷ a Class D felony, “in that on or about Sunday, December 3, 2000, at approximately 3:46 A.M., on Hwy I-55 southbound from Reavis Barracks in the County of St. Louis, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol, and on or about June 8, 1995, defendant had pleaded guilty to driving while intoxicated, for events occurring on March 4, 1995 . . . and on or about August 18, 1999, defendant was convicted of driving while intoxicated, for events occurring on January 10, 1999[]”⁸

⁶Ex B
⁷RSMo 2000
⁸Ex D

- b On July 1, 2003, the Circuit Court of St Louis County found Britt guilty upon his plea of guilty to driving while intoxicated, as charged in Count I, and sentenced Britt to four years of incarceration, but recommended him for placement in the Shock Incarceration Program pursuant to § 559 115.
- c On October 15, 2003, the Circuit Court of St Louis County ordered the remainder of Britt's sentence be suspended and that on November 8, 2003, Britt be placed on probation for five years

6 In the Circuit Court of Cape Girardeau County

- a On May 2, 2003, the Prosecuting Attorney filed an information charging Britt in

- i Count I with violating § 577 010,⁹ a Class D felony, "in that on or about February 15, 2003, Highway 61 East in Jackson, in the County of Cape Girardeau, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol, and [The Information alleges three prior guilty pleas to driving while intoxicated], and
- ii Count II with violating § 302 321,¹⁰ a Class A misdemeanor, "in that on or about February 15, 2003, in the County of Cape Girardeau, State of Missouri, the defendant operated a motor vehicle on a highway, on Highway 61 East in Jackson, during a time when his operator's license was revoked under the laws of this state, and acted with criminal negligence with respect to knowledge of the fact or knew that his operator's license was revoked "¹¹

⁹RSMo 2000

¹⁰RSMo Supp 2002

¹¹Ex E

- b On July 21, 2003, the Circuit Court of Cape Girardeau County found Britt guilty, on his plea of guilty, of
- i driving while intoxicated, as charged in Count I, and sentenced Britt to five years of incarceration, but recommended him for placement in the Shock Incarceration Program pursuant to § 559 115, and
- ii driving while revoked, as charged in Count H, and sentenced Britt to one year of incarceration
- c On October 14, 2003, the Circuit Court of Cape Girardeau County ordered the remainder of Britt's sentence be suspended and that on November 8, 2003, Britt be placed on probation for five years

Conclusions of Law

We have jurisdiction of the complaint ¹² The MREC has the burden to prove facts for which the law allows discipline ¹³

I Pleas of Guilty

The MREC cites § 339.100 2(18), which allows discipline against a licensee who has

[b]een finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter or for any offense involving moral turpitude, whether or not sentence is imposed[]

Britt pled guilty five times to driving while intoxicated two times as a Class B misdemeanor and three times as a Class D felony. Section 577 010¹⁴ provides.

¹²Section 621 045

¹³*Missouri Real Estate Comm'n v. Berger*, 764 S W 2d 706, 711 (Mo App , E D 1989)

¹⁴We quote from the version of § 577 010 in RSMo 2000, because it is identical to the version in RSMo 1994, and has not been amended since

1 A person commits the crime of "**driving while intoxicated**" if he operates a motor vehicle while in an intoxicated or drugged condition

Britt also pled guilty three times to driving while revoked Section 302.321¹⁵ provides

1 A person commits the crime of driving while revoked if such person operates a motor vehicle on a highway when such person's license or driving privilege has been canceled, suspended, or revoked under the laws of this state or any other state and acts with criminal negligence with respect to knowledge of the fact that such person's driving privilege has been canceled, suspended, or revoked

A Reasonable Relationship to
Broker's Qualifications, Functions or Duties

1 Qualifications

The qualifications for a real estate broker include "good moral character" and competence "to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public"¹⁶ The offenses to which Britt pled guilty are reasonably related to the good moral character qualification, as we explain below regarding § 339 100.2(16), which authorizes discipline for a licensee who commits acts that would be grounds for denying a license under § 339 040

2 Functions or Duties

The Court of Appeals has held.¹⁷

The ordinary meaning of "function" applicable here is "1 professional or official position: OCCUPATION, 2 the action for which a person or thing is specially fitted or used or for which a thing exists" The shared meaning elements of synonyms of "function" is "the acts or operations expected of a person or thing" *Webster's New Collegiate Dictionary*. 465 (1977) The ordinary meaning of "duty" applicable here is "2a obligatory tasks,

¹⁵We quote from the version of § 302 321 in RSMo Supp 2007, because it does not differ in substance from how it appeared in RSMo Supp 1995 and in RSMo 2000

¹⁶Section 339 040 1(1) and (3)

¹⁷*Board of Regs'n for the Healing Arts v. Levine*, 808 S W 2d 440, 442 (Mo App , W D 1991)

conduct, service, or functions that arise from one's position (as in life or in a group) 3a a moral or legal obligation " *Webster's New Collegiate Dictionary*, 355 (1977)

Section 339.010 1 sets forth the functions or duties of a real estate broker

- (1) Sells, exchanges, purchases, rents, or leases real estate,
- (2) Offers to sell, exchange, purchase, rent or lease real estate,
- (3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate,
- (4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange,
- (5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon,
- (6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate,
- (7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate,
- (8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate,
- (9) Engages in the business of charging to an unlicensed person an advance fee in connection with any contract whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public,
- (10) Performs any of the foregoing acts as an employee of, or on behalf of, the owner of real estate, or interest therein, or improvements affixed thereon, for compensation

Each of these functions involves handling the property, business, or financial interests of others.

While a DWI in the distant past might not relate to the functions or duties of a real estate broker.¹⁸ Britt has been found guilty five times for alcohol related crimes, the last in 2003. This shows more than one or two instances of poor judgment. It shows a problem drinker who routinely ignored the rights and safety of others. A real estate broker is responsible for the property and money of others. While Britt's answer to the complaint alleges that he has been rehabilitated successfully, the law requires us to consider only evidence presented at our hearing.¹⁹ From the evidence before us, we conclude that there is cause to discipline Britt because his eight pleas of guilty to alcohol related offenses relate to his functions or duties as a broker.

B Moral Turpitude

The MREC contends that Britt's offenses involve moral turpitude. The Court of Appeals has held.²⁰

With regard to the matter of "moral turpitude," it has been said that there are three classifications of crimes. Those classifications are (1) crimes that necessarily involve moral turpitude, such as frauds; (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking, and (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee.

Five alcohol related traffic offenses show a total lack of respect for the law and the safety of others. Therefore, Britt's guilty pleas are to offenses that involve moral turpitude.

There is cause to discipline Britt under § 339.100.2(18) because his guilty pleas are reasonably related to the qualifications, functions, or duties of a real estate salesperson and involve moral turpitude.

¹⁸*Missouri Real Estate Comm'n v. Gillotti*, No. 07-0860 RE at 13 (Mo. Admin. Hearing Comm'n Feb. 1, 2008) (two DWIs more than eight years old did not relate to a real estate salesperson's functions and duties)

¹⁹Section 536.070, RSMo 2000

²⁰*Brehe v. Missouri Dept. of Elementary & Secondary Educ.* 213 S.W.3d 720, 725 (Mo. App., W.D. 2007) (citations omitted)

II Grounds to Refuse Issuance of the License

Section 339 100 2(16) authorizes discipline for

[c]ommitting any act which would otherwise be grounds for the
commission to refuse to issue a license under section 339 040[]

Section 339 040 sets forth the qualifications for a real estate salesperson license.

1 Licenses shall be granted only to persons who present
satisfactory proof to the commission that they

(1) Are persons of good moral character, and

* * *

(3) Are competent to transact the business of a broker or
salesperson in such a manner as to safeguard the interest of the
public

A Moral Character

Good moral character is honesty, fairness, and respect for the law and the rights of
others²¹ “When character evidence is admissible in a civil case, proof may be made by
reputation Proof may also be made by specific acts when a particular trait of character of a
party is an actual issue in the suit and that
trait is susceptible of proof by specific acts. More than one specific act must be shown in order
to create a logical inference as to a person’s character ”²²

A guilty plea is evidence of the conduct charged²³ and supports a finding in a
professional licensing proceeding that the licensee is guilty of such conduct²⁴ The guilty plea
constitutes an “admission,” which the defendant may explain²⁵ Britt has submitted nothing to

²¹*Hernandez*, 936 S W 2d at 899 n 1

²²O'BRIEN, MO LAW OF EVIDENCE (4th ed 2002) § 10-7 (footnotes omitted)

²³*Mandacina v. Liquor Control Bd. of Review*, 599 S W 2d 240, 243 (Mo App, W D 1980)

²⁴*Wolff v State Bd. of Chiropractic Examiners*, 588 S W 2d 4, 6 (Mo App, E D 1979)

²⁵*Moe v. Blue Springs Truck Lines*, 426 S W 2d 1,3 (Mo 1968)

deny that he committed the crimes charged. In fact, his answer to the complaint admits, "It is true that I was a convicted felon and sentenced to incarceration due to charges of DWI's." Therefore, we find that he committed the conduct to which he pled guilty.

However, when the qualification at issue is "good moral character," we must consider not only the crime per se, but the circumstances under which it was committed if they are put at issue. "Good moral character" is a highly subjective judgment, not an element of a crime. It is impossible to determine whether a crime implicates good moral character without an individualized consideration of the circumstances under which the crime was committed. In the context of an applicant case, when the MREC proves a criminal conviction, we determine the applicant's moral character from his conduct, present reputation, evidence of any rehabilitation, and upon "a consideration and determination of the entire factual congeries."²⁶

For the same reasons that we found that Britt's crimes involved moral turpitude, we find that they show a lack of good moral character.

Britt's answer asserts that he has taken responsibility for his drinking and has been sober for over six years, having stopped his drinking before sentencing. He further states

I work 12 to 14 hours daily and have rebuilt my business, and have very good rapport with my customers. I am able to supply you with personal or business references if you would like. I have not been involved in any trouble other than the DWI's, and the only person that hurt was myself. After much soul searching and expense my life has been turned around without any alcohol.

As we said earlier, we cannot accept the assertions in Britt's answer as evidence. However, upon our certification of the record to the MREC, the law requires the MREC to notify Britt of its hearing to determine what kind of discipline it will impose.²⁷ Britt will have the opportunity to appear and present evidence before the MREC at that time.

²⁶*State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974). See also *State Bd. of Regis'n for the Healing Arts v. DeVore*, 517 S.W.2d 480, 486 (Mo. App., K.C.D. 1974).

²⁷Section 621.110

As our record stands, if Britt were applying for a license, the conduct to which he admitted in his guilty pleas would be sufficient grounds to deny him licensure for a lack of good moral character

B. Competence

Competence, when referring to occupation, is “the actual ability of a person to perform in that occupation”²⁸ It also refers to the “disposition to use an otherwise sufficient professional ability”²⁹

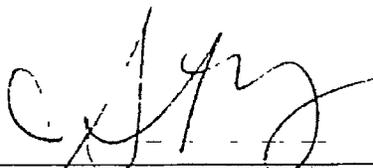
While we concluded that Britt’s crimes related to the functions or duties of a broker, the MREC did not show that the circumstances of the offenses were such that they actually interfered with Britt’s fulfillment of his professional duties or showed that he had no disposition to fulfill his duties. Therefore, if Britt were applying for a license, the conduct admitted in Britt’s guilty pleas would not be sufficient evidence of incompetence

There is cause to discipline Britt under § 339.100.2(16). The conduct to which he admitted in his guilty pleas would be sufficient grounds to deny him licensure for a lack of good moral character. However, the conduct would not be sufficient to deny him licensure for a lack of competence to transact the business of a broker in such a manner as to safeguard the interest of the public.

Summary

There is cause to discipline Britt under § 339.100.2(16) and (18)

SO ORDERED on April 22, 2008



JUNE STRIEGEL DOUGHTY
Commissioner

²⁸Section 1 020(8), RSMo 2000

²⁹*Johnson v. Missouri Bd. of Nursing Administrators*, 130 S W 3d 619, 642 (Mo App, W D 2004)